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Amendment After Final
Attorney Docket No. S63.2B-9867-US01

Remarks

This Amendment After Final is in response to the Final Office Action dated September 21, 2004. In the Office Action claims 1-4, 6-10, 14, 15, 30, 33, 34, 38, 41, 42, 44, and 45 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,350,277 to Kokur. Claims 11-13, 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kokur '277 in view of U.S. Patent No. 5,591,223 to Lock et al. These rejections will be addressed under headings consistent with the headings of the Office Action. Claims 1, 30, and 38 have been amended. Claims 46 and 47 have been added. No new matter has been added.

35 USC § 102

In the Final Office Action claims 1-4, 6-10, 14, 15, 30, 33, 34, 38, 41, 42, 44, and 45 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,350,277 to Kokur. Applicant has amended claim 1 to recite "the frangible member attached to only the side portion of the two interconnected members". Kokur teaches frangible members which overlap the two interconnected members and are not attached to only the side portion of the interconnected members. For at least this reason, claim 1 and claims 2-16 and 41-42 dependent thereof overcome the rejection.

Applicant has amended claim 30 to recite "the stent further comprising at least one frangible restraining member disposed completely between at least two interconnected members and restraining the interconnected members from self-expansion". Kokur teaches frangible members which overlap the two interconnected members and are therefore not disposed completely between the at least two interconnected members. For at least this reason, claim 30 and claims 31-37 and 44 dependent thereof overcome the rejection.

Applicant has amended claim 38 to recite "no portion of the temporary strut overlapping any portion of the outer surface of the permanent struts being restrained". Kokur's frangible members lie in part on the outer surface of the struts being restrained. This teaching is counter to the limitation recited above for amended claim 38. For at least this reason, claim 38 and claims 39-40 and 45 dependent thereof overcome the rejection.

Applicant respectfully requests that the 102 rejection in light of Kokur be

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withdrawn.

35 USC § 103

In the Final Office Action, claims 11-13, 35-37, and 39-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kokur '277 in view of U.S. Patent No. 5,591,223 to Lock et al. Applicant asserts this rejection is inappropriate under 35 US 103(c). Subject matter developed by another person which qualifies as 102(e) prior art shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Though the instant invention and the 102(e) prior art reference were invented by different inventors, at the time the instant invention was filed both it and the 102(e) reference were owned by or subject to an obligation of assignment to Scimed Life Systems, Inc. Therefore, U.S. Patent No. 6,350,277 to Kokur is not a proper prior art reference. In light of this, Applicant asserts that claims 11-13, 35-37, and 39-40 are allowable as an obviousness rejection cannot be made using Kokur. Applicant respectfully requests that the 103(a) obviousness rejection be withdrawn.

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CONCLUSION

In view of the foregoing it is believed that the present application, with pending claims 1-15, 30, and 33-45 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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